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STUBHUB, INC. and LAST MINUTE

TRANSACTIONS, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: STUBHUB REFUND LITIGATION

This document relates to:

Reynolds v. StubHub, Inc.,

Case No. 1:20-cv-03508

Case No. 4:20-md-02951-HSG

**NOTICE OF MOTION AND MOTION
TO DISMISS PLAINTIFF REYNOLDS'
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Hearing:

Date: November 12, 2020

Time: 2:00 p.m.

Location: Courtroom 2 (4th Floor)

Judge: Honorable Haywood S. Gilliam

1 TO PLAINTIFFS AND ALL COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 12, 2020 at 2:00 p.m. in Courtroom 2 on the
3 4th Floor of the above-entitled court, located at 1301 Clay Street, Oakland, CA 94612, Defendants
4 StubHub, Inc. and Last Minute Transactions, Inc. (collectively, "Defendants") will appear before
5 the Honorable Haywood S. Gilliam and present their Motion to Dismiss (the "Motion") the
6 Complaint of Plaintiff Diane Reynolds pursuant to Federal Rule of Civil Procedure 12(b)(5).
7 Plaintiff Reynolds has failed to timely serve the Complaint on Defendants as required by Rule 4(m)
8 of the Federal Rules of Civil Procedure.

9 This Motion is based upon this Notice of Motion and Motion, the pleadings and papers filed
10 in this action, and such other matters as may be presented to the Court before or at the time of the
11 hearing.

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13 Dated: September 9, 2020

McDERMOTT WILL & EMERY LLP

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15 By: /s/ William P. Donovan, Jr.

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23 *STUBHUB, INC. and LAST MINUTE*
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MEMORANDUM OF POINTS AND AUTHORITIES

Federal Rule of Civil Procedure Rule 4(m) requires a plaintiff to effect proper service on a defendant within 90 days of filing a complaint. *Id.* (“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”) If a plaintiff fails to timely serve a complaint on a defendant within the 90-day period prescribed by Rule 4(m), she may only prevent dismissal if she can show “good cause” sufficient to cure the failure to serve. *Id.*; see *Jen v. City and Cty. of San Francisco*, 2018 WL 1524049 at *2 (N.D. Cal. Mar. 28, 2018) (Gilliam, J.) (plaintiff “bears the burden of establishing that service was valid under Rule 4” when service is challenged).

On May 5, 2020, Plaintiff Reynolds filed her Complaint against Defendants in the United States District Court for the Southern District of New York. (*Reynolds v. StubHub, Inc. et al.*, No. 1:20-cv-03508, Dkt. No. 1) (“*Reynolds*”). The court notified Plaintiff Reynolds of deficiencies in the filing, at which point she refiled the Complaint on May 7, 2020. (*Reynolds*, Dkt. No. 2.) Pursuant to Rule 4(m), Plaintiff Reynolds was required to serve the Complaint within 90 days of filing, which would have been August 5, 2020. She failed to do so. Plaintiff Reynolds never presented a summons to the clerk of the court for signature and seal, as required by Rule 4(b). Indeed, Plaintiff Reynolds’ actions are even more egregious given that Plaintiff Reynolds was served with repeated notification of motion practice, filings, hearing dates, and consolidation orders from counsel and from the Judicial Panel on Multidistrict Litigation (“JPML”). On August 13, 2020, Plaintiff Reynolds’ case was transferred to this Court as part of MDL 2951, making this Court the appropriate forum in which to bring this Motion. (*Reynolds*, Dkt. No. 5.)

Plaintiff Reynolds never responded to any request for a position from the JPML, and has not prosecuted her case in any meaningful way. Indeed, when the parties submitted the joint stipulation to this Court (*In re: StubHub Refund Litigation*, No. 4:20-md-02951-HSG, Dkt. No. 2.), explaining that Defendants would seek to dismiss Plaintiff Reynolds’ case for failure to issue service and for want of prosecution, Defendants copied Plaintiff Reynolds’ counsel on that correspondence and served Plaintiff Reynolds’ counsel with copies of the same. The other

1 Plaintiffs, through that stipulation, acknowledged that the Reynolds' complaint has not been
 2 served. (*Id.*) Plaintiff Reynolds' counsel never responded to any correspondence from any counsel
 3 after repeated attempts. Because Plaintiff Reynolds has taken no steps to serve Defendants, let
 4 alone take any action whatsoever to prosecute her case, this Court should dismiss the *Reynolds*
 5 case, Number 1:20-cv-03508, in its entirety and with prejudice, because Plaintiff Reynolds cannot
 6 show good cause for the failure to take any actions to serve Defendants or to otherwise pursue her
 7 alleged claims.

8 CONCLUSION

9 For the reasons set forth above, Defendants respectfully request that this Honorable Court
 10 grant their Motion and dismiss Plaintiff Reynolds' Complaint.

11
 12 Dated: September 9, 2020

McDERMOTT WILL & EMERY LLP

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19 *Counsel for Defendants*
 20 *STUBHUB, INC. and LAST MINUTE TRANSACTIONS,*
 21 *INC.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 9, 2020 by CM/ECF system on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5-5, and by U.S. Mail and electronic mail on Louis Johnson, Jr, The Law Office of Louis J. Johnson Jr., L.L.C., 500 Paterson Plank Road, Union City, NJ 07087, ljohnson@louisjohnsonlaw.com.

/s/ William P. Donovan, Jr.
William P. Donovan, Jr.